

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

FRANCISCO DIAZ, JR.,	:	
	:	C.A. No: 06A-03-001 (RBY)
Appellant,	:	
	:	
v.	:	
	:	
FITZGERALDS AUTO	:	
and UIAB,	:	
	:	
Appellees.	:	

ORDER

This is an appeal from the February 10, 2006 decision of the Unemployment Insurance Appeal Board (“Board”). Appellant, Francisco Diaz, Jr., was denied unemployment insurance benefits related to his separation from his employer, Fitzgerald Auto Salvage, Inc. Diaz appealed the initial decision, and the matter was heard by a Claims Referee, who also disqualified Diaz from benefits. The Referee’s decision was mailed on September 29, 2005 to Diaz’s address of record. A claimant may appeal the decision of a referee within ten (10) days from the date the referee’s decision is mailed.¹ If no appeal is filed within the time provided by § 3318(b), the referee’s decision is deemed final.

In this case, the Referee’s decision was mailed to Diaz on October 14, 2005; therefore, the last day to file an appeal was October 24, 2005. Diaz filed an appeal on October 26, 2005. Accordingly, the Board rejected Diaz’s appeal for its

¹ 19 Del. C. § 3318(b).

untimeliness. Diaz subsequently brought the present appeal. Appellee Fitzgerald now moves the Court for an order dismissing Diaz's appeal. In addition to the claim that the Board correctly rejected Diaz's untimely appeal, Fitzgerald also requests that Diaz's appeal be dismissed, because it was filed in the wrong court. Citing 19 Del. C. § 3323, which requires a claimant to commence an appeal from a decision of the Board in Superior Court in the county in which the claimant resides or the employer's place of business is located, Fitzgerald argues that Diaz should have filed his appeal in the Superior Court in and for Sussex County, because Diaz resides in Sussex County, and Fitzgerald's place of business is in Sussex County.

This Court reviews a decision of the UIAB to determine whether the Board's decision is supported by substantial evidence, and whether that decision is free from legal error.² Delaware Courts have defined substantial evidence as “more than a scintilla but less than a preponderance,” or that in which a reasonable mind might accept as adequate to support a conclusion.³ On appeal, this Court has limited power to review the factual findings of an administrative agency.⁴ As such, “the findings of the Unemployment Insurance Appeal Board as to facts, if supported by the evidence and in absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be

² *Lively v. Dover Wipes Co.*, 2003 WL 21213415, at *1 (Del.Super.)(citing *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del.1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del.1985); *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308 (Del.1975); *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238, 239 (Del.Super.Ct.1979)).

³ *Id.* (citing *Onley v. Cooch*, 425 A.2d 610, 614 (Del.1981); *Oceanport Indus. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del.1994)).

⁴ *Id.*

confined to the questions of law.”⁵ This Court does not weigh the evidence, determine questions of credibility, or make its own factual findings, but “merely determines if the evidence is legally adequate to support the agency's factual findings.”⁶ If the Board’s finding is supported by substantial evidence, the decision will not be disturbed.⁷

The Board’s decision should be affirmed. The time frame afforded for filing an appeal from a decision of the UIAB is a statutory condition of jurisdiction “that is both mandatory and dispositive.”⁸ The ten-day limit for filing an appeal begins to run when the decision is mailed to the claimant, unless the decision fails to reach the claimant due to an error on the part of the Board.⁹ A decision mailed with the proper address and postage will be presumed to have been received by the claimant.¹⁰ Although the Board cannot accept jurisdiction over an untimely appeal, the appeal may be accepted if the Board determines that “the interest of justice would not be

⁵ *Id.* (quoting *Malatesta v. Thiokol Corp.*, 1994 Del.Super. LEXIS 92,*4 (Del.Super.Ct.1994)).

⁶ *Id.* (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del.1965); 29 Del. C. § 10142(d)).

⁷ *Id.*

⁸ *Id.* (citing *Duncan v. Delaware Dep't of Labor*, 2002 Del.Super. LEXIS 242, * 4 (Del.Super.)).

⁹ *Id.* (citing *Bowers v. UIAB*, 1998 Del.Super. LEXIS 92, *4 (Del.Super.)).

¹⁰ *Id.*

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served by inaction.”¹¹ However, a claimant’s assertion that he did not receive the mailing is an insufficient reason for the Board to consider an untimely appeal.¹²

Without any evidence that Diaz did not receive the Referee’s decision because of an error on the part of the Board, the decision must be deemed properly mailed. Therefore, there is sufficient evidence to support the Board’s rejection of Diaz’s untimely appeal. Fitzgerald’s motion to dismiss should be **GRANTED**.

Because of the foregoing, the Court does not address Appellee’s second argument regarding venue.

SO ORDERED this 13th day of April, 2006.

/s/ Robert B. Young

J.

oc: Prothonotary
cc: Parties

¹¹ *Id.* (citing *Manlove v. Sears Fashion Center*, 1992 Del.Super. LEXIS 545 (Del.Super.Ct.1992); *Funk v. UIAB*, 592 A.2d 222, 225 (Del.1991)).

¹² *Id.* (citing *Funk*, 592 A.2d at 225).